IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.224 OF 2003

Naresh Maheshlal Chauhan ...Appellant.
Versus
State of Maharashtra ...Respondent

Mr.R.C.Makhija for the Appellant.
Mr.A.M.Shringarpure A.P.P for the State.

CORAM : D.G.DESHPANDE AND
V.M. KANADE, JJ.
DATE : DECEMBER 21, 2005.

P.C.:

. Heard Mr.Makhija for the accused and the learned A.P.P for the State.

2. The accused has been convicted by the Trial Court for the offences punishable under Sections 302 and 324 of the Indian Penal Code. Only one submission was made by Mr.Makhija and that is that in the Trial Court a Advocate was appointed to defend the accused from Legal Aid Panel. When vital material and important eye witnesses are examined i.e. eye witnesses P.W.2, P.W.3, P.W.4, P.W.5 & P.W.6, the Advocate of the accused did not appear in Court. The Court asked to the accused to cross-examine the witnesses the accused obviously could not cross-examine, therefore, the cross-examination was declined by the accused. Therefore, according to Mr.Makhija this has resulted in serious miscarriage of

justice because important eye witnesses could not be cross-examined. Mr.Makhija pointed out that the Court should have appointed some other Advocate in place of the one already appointed and who was found to be negligent. An opportunity to cross-examine the witnesses in a criminal trial is necessary. Therefore, according to him this is the fit case for remand.

2. The learned A.P.P did not dispute the fact that witnesses i.e. P.W.2, P.W.3, P.W.4, P.W.5 & P.W.6 were not cross-examined because the Advocate appointed for the accused was absent. He has no objection for remand, but, he contended that according to the prosecution case this accused has caused injuries to number of persons that is as much as eight to nine persons and, therefore, there should have been separate charge in respect of the injuries caused to each of the victim. According to him a simple common charge that the accused caused injuries to many people, was not a proper charge. We find that this submission is having the basis of the present Law. Therefore, on both the counts the judgment and conviction is set-aside. The appeal is allowed in following manner.

i. The judgment of conviction i
set-aside. The matter is remanded to the
Trial Court for fresh trial.

ii. The trial Court shall appoint a
Advocate from Legal Aid Panel with a warning
to defend the case of the accused with
diligent manner without fail.

iii. The Trial Court will complete the
trial before 30th April, 2006. The Trial
Court should also take into consideration the
amendment in respect of causing injuries to
different persons and frame the charge
accordingly.

iv. Appeal is disposed of accordingly.

v. If R & P called, if any, sent to the
Trial Court immediately alongwith this order.

(D.G.DESHPANDE,J.)

(V.M.KANADE,J.)